

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN, TEXAS**

IN RE: GRAND JURY PROCEEDINGS,	§	CIVIL ACTION NO.
	§	
GRAND JURY NO. 08-4	§	A-09-CR-072-LY

**MOTION TO QUASH SUBPOENA DUCES TECUM AND
MOTION FOR PROTECTIVE ORDER**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NOW COMES **John Doe, C.P.A.**, and makes this, his Motion to Quash Subpoena Duces Tecum and Motion for Protective Order and in support thereof would show unto the Court as follows:

I.

John Doe is an adult resident of Austin, Travis County, Texas. He is a certified public accountant licensed by the Texas State Board of Public Accountancy (sometimes herein after “the Board”). As a licensee of the Board, John Doe is subject to the Public Accountancy Act, Chapter 901, Occupations Code (Vernon’s 2007) as well as by the rules and regulations promulgated by the Board and codified in Title 22, Texas Administrative Code, Section 501, *et seq.*

II.

In the Public Accountancy Act, Section 901.457 deals with the Accountant-Client privilege and with the confidentiality of client information and client documents. Similarly, the Administrative Code in 22 TX ADC § 501.75 (Vernon’s, 2009) deals with confidential client communications. A recent amendment to § 501.75 which became effective January 28, 2009, provides in relative part:

Except by permission of the client or the authorized representative of the client, a person . . . shall not voluntarily disclose information communicated to him by the client relating to, and in connection with, professional accounting services or professional accounting work rendered to the client by the person. Such information shall be deemed confidential. However, nothing herein shall be construed as . . . prohibiting disclosures pursuant to a *court order signed by a judge* [emphasis added], in investigations or proceedings under the Act, in ethical investigations conducted by private professional organizations, or in the course of peer reviews.

Title 22, TX ADC § 501.75.

III.

On January 8, 2009 a grand jury empaneled by this Court issued a subpoena duces tecum directed to John Doe which was served upon him on or about January 14, 2009. The subpoena commanded the witness to appear and testify before the grand jury on February 17, 2009, at 9:30 a.m. and also commanded that the witness bring with him any and all documents listed in an attachment to the subpoena and incorporated therein. The documents requested by the subpoena are documents relative to a client or former client of Mr. Doe which documents your Movant believes and contends are subject to Section 901.457 of the Texas Public Accountancy Act and by 22 TX ADC § 501.75.

IV.

As of the time of the filing of this Motion, Movant is unaware of any “court order signed by a judge” directing him or authorizing him to release or produce the documents requested in the subpoena duces tecum. Because of this, Movant fears that complying with the subpoena would require him to divulge and/or produce information or documents in contravention of the above cited state statutes and could subject him to civil actions by or on behalf of the former client as well as disciplinary actions instituted against him by the Board. Accordingly, John Doe requests this Court to quash the subpoena duces tecum and to issue a protective order that he not be required to comply

or respond with that subpoena. Alternatively, Mr. Doe requests the Court to enter an order, signed by the judge, directing or compelling him to produce the requested information.

WHEREFORE, PREMISES CONSIDERED, John Doe, C.P.A., requests that the Court grant the relief requested hereinabove or to make such other orders as the Court deems appropriate under the circumstances.

Respectfully submitted,

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BY /S/Richard J. Reynolds

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of February, 2009, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Mr. Anthony Brown
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/S/Richard J. Reynolds
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